Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Connect America Fund	WC Docket No. 10-90
Sandwich Isles Communications, Inc.	CC Docket No. 96-45
Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission's Rules	FCC 17-85

COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION

Sandwich Isles Communications, Inc. ("SIC") submits these comments in support of the Petitions for Reconsideration in the above captioned matter filed by the Sovereign Councils of the Hawaiian Homelands Assembly ("SCHHA") and Waimana Enterprises, Inc. ("WEI"). These Petitions make it abundantly clear that the Commission has, at best, profoundly misunderstood and, in any event, completely mischaracterized the Constitutional and legal status of the Hawaiian Home Lands ("HHL") and the rights and privileges of native Hawaiians.

What is fundamentally at issue in this matter is the rights of the native Hawaiians eligible under the Hawaiian Homes Commission Act of 1921 who are the recipients of the telecommunications services that SIC has provided for the past 20 years pursuant to the license from the Department of Hawaiian Home Lands ("DHHL") under the USF Program and whose interests are represented by the SCHHA. The Commission's erroneous characterization of the status of the Hawaiian Home Lands and the misapplication of the language and purpose of its Rule defining "Tribal Lands" yields a conclusion which disserves the interests of SIC's customers and distorts the whole purpose of the USF program. The unavoidable result of this compounded series of errors is that the cost of service to native Hawaiians will increase and the quality of service they receive will decline. Reconsideration of this Order is imperative.

Two points raised by the Petitions bear particular emphasis:

A. Native Hawaiians Reside on "Tribal Lands" Within the Language and Purpose of Rule 54.5. The General Policy Favoring Competition Does Not Apply to Such Cases.

The Commission seemingly recognizes that its attempt to exclude the Hawaiian Home Lands from the scope of Rule 54.5 is untenable. As WEI has pointed out, the Rule is not based on the existence or non-existence of a federal relationship; it is based on the fact that there has been a "low level" of telecommunications services in these areas which are often geographically remote and difficult to serve. *See*, WEI Petition at 3-4. That certainly is the case related to the Hawaiian Home Lands; but for the service provided by SIC as a USF participant under its parent company's arrangements with DHHL, it is very likely that the Hawaiian Home Lands would be as inadequately served and that some areas would be unserved, as was the case before WEI entered into the arrangements with DHLL. See, e.g. Comments of SIC on Petition to Refresh the Record in Docket 09-133 at 19-21 (April 2016).

The Order seeks to avoid the force of Rule 54.5 and its purpose by asserting that, in any event, the Commission can preempt the license issued by DHHL. The fundamental error of this proposition is fully demonstrated by the SCHAA which compellingly explains the reasons why the DHHL license is not a state or local governmental requirement within the reach of Section 253(a) of the Communications Act. The license was, rather, issued to a native Hawaiian controlled organization. SCHHA Petition at 2-3. The Commission precedent cited for the conclusion that it can preempt rules governing Tribal Lands, *AB Fillins,* Memorandum Opinion and Order, 12 FCC Rcd 11755, para. 18 (1997), provides scant support for that proposition and is, in any event, inapplicable to the facts here.

Thus, the question that the Order should have addressed is whether, in circumstances in which Section 253(a) does not apply, the Commission can nonetheless preempt to further its general policy favoring competition in the provisioning of telecommunications services. If the Commission were

seriously intent upon resolving that question, it should have realized that the issue has implications going well beyond the HHL and, therefore, can only be addressed in the context of a proceeding initiated in accordance with the Administrative Procedure Act.

But there is an even more fundamental problem with the theory that the policies underlying Section 253 apply to the HHL even though it is a Tribal Land under Rule 54.5. The Commission has explicitly – and unanimously – recognized that competition does not automatically and inevitably serve the purposes of the USF Program. In the Mobility Fund Proceeding the Commission explicitly held that the interests of economic efficiencies dictated that there be only one authorized ETC in each service area. *See* Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, at para 316 (Nov. 18, 2011). This policy plainly cannot be changed without an NPRM. Thus, SIC remains the only ETC providing service throughout the HHL in accordance with the DHHL license.

These considerations serve to underscore the reasons advanced by SCHHA and WEI for reconsideration. The Order is without legal foundation and rests on policy considerations that are fundamentally at odds with the purpose of the USF Program.

B. The Order Will Serve Only to Harm the Interests of Native Hawaiians.

The Commission may be under the impression that, since there will only be a single ETC serving the HHL, its efforts to distinguish the residents of the HHL from other native American lands and its preemption of the DHHL authorization will not cause any cognizable harm to SIC's customers. The Commission is simply wrong.

Unless the Order is withdrawn, the whole predicate upon which telecommunications service to the HHL was designed and is based threatens to collapse. At best, the native Hawaiians residing in the

HHL will experience increased costs and a reduction of the quality of service; at worst, some parts of the HHL may be left entirely without service.

The Commission Order completely ignores the detailed history of the origins of the DHHL license spelled out in WEI's original comments. In brief, those comments show that in order to be able to satisfy the HHL obligation to serve the unserved HHL areas and to pay the full cost of building the network using funds borrowed from RUS, WEI needed and got – with the FCC's full knowledge – the kinds of normal assurances that are provided to assure its ability to serve all of the residents of the HHL. *See*, WEI Comments at 5-6. As those Comments further point out, the DHHL license is not "exclusive " in the sense that it precludes competitors from providing service; it simply provides that any such telecommunications service provider must lease capacity from SIC. WEI Comments at 6; SIC Comments at 3.

In these circumstances, the only thing the Commission can expect to gain by its sweeping preemption is to invite another service provider to cherry pick the more urbanized areas of the HHL and to serve the more lucrative business and governmental facilities (schools, hospitals etc.) in the HHL. Because such competitor will not have the burden of the massive and ongoing investment in facilities that SIC has borne, it can be expected – even without USF exclusivity – to charge competitive rates to businesses and governmental institutions that are less price sensitive then residential customers, especially residential customers in very remote areas of the HHL. If that happens, it is equally certain that, at best, the overall quality of service to the HHL will decline and, at worst, the ETC serving the area will be unable to continue to provide any service to the more remote areas of the HHL.

These consequences are not certain. They are, however, certainly predictable. The Commission's failure to even consider the history and circumstances surrounding the DHHL license and the consequences of preemption are of themselves grounds for reconsiderations. Indeed, unless the Order is promptly rescinded and reconsideration undertaken in a more orderly fashion, the

Commission's repeated insistence that it is committed to the continuation of quality service to the native Hawaiians of the HHL is seriously open to question.

Respectfully submitted,

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